IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

EDWARD JACOB LUECKENBACH II **PLAINTIFF**

v. **CIVIL ACTION NO.: 1:16-cv-00189-SA-DAS**

HORIZON MISSISSIPPI PUBLICATIONS, INC.
d/b/a STARKVILLE DAILY NEWS **DEFENDANTS**

MOTION OF DEFENDANT HORIZON MISSISSIPPI PUBLICATIONS, INC. D/B/A STARKVILLE DAILY NEWS FOR SUMMARY JUDGMENT

Defendant Horizon Mississippi Publications, Inc. d/b/a *Starkville Daily News* ("*Starkville Daily News*"), pursuant to Federal Rule of Civil Procedure 56, moves for summary judgment as a matter of law and in support thereof, states as follows:

1. Plaintiff, Edward Jacob Lueckenbach II ("Plaintiff" or "Lueckenbach"), filed the instant suit for injunctive relief and defamation based on the news article, "Starkville Police Department Blotter," published on its website on October 10, 2010, which article is still available online. The news article – based on an official record received from the City of Starkville Police Department – truthfully reported about Plaintiff's arrest by the Starkville Police Department.

2. The allegedly defamatory publication was made on or about October 10, 2010. Plaintiff's Complaint was filed on August 29, 2016. Under the single-publication rule, which applies to electronic news articles, Plaintiff's claim is barred by the one-year statute of limitations for defamation claims. *See* Miss. Code. Ann. § 15-1-35 (West). For that reason alone, this action should be dismissed.

3. Plaintiff's Complaint is non-actionable and should be dismissed for several other alternative independent reasons, as explained in paragraphs 4-7 below.

4. The publication is non-actionable because it is not false or defamatory. Plaintiff was in fact arrested by the Starkville Police Department for public profanity or drunkenness. Therefore, *Starkville Daily News*' publication about Plaintiff's arrest by the Starkville Police is true. The publication also says that Plaintiff is innocent until proven guilty, so that even if it is incorrect, it is not defamatory.

5. Also, because *Starkville Daily News*' publication is a fair and accurate summary of an official report, the article is protected under state law by the official report or public records privilege.

6. *Starkville Daily News*' publication is non-actionable under the First Amendment to the United States Constitution because it is based on an official public record lawfully received from a public entity, the City of Starkville Police Department, and the information is generally known to the public through the prior publication of Plaintiff's arrest, both in the *Starkville Daily News*' print publication and in *The Commercial Dispatch*, the daily newspaper in Columbus, Mississippi.

7. Finally, there is no duty imposed by law upon *Starkville Daily News* to remove this truthful information about Plaintiff from *Starkville Daily News*' website. There is no duty to retract allegedly defamatory statements under state law. The imposition of such a duty would be an impermissible content-based restriction upon *Starkville Daily News*' exercise of its federal and state constitutional rights to freedom of expression as well as an impermissible prior restraint, which is prohibited by the First Amendment and the State Constitution.

8. For each of these reasons, Plaintiff's Complaint is non-actionable under the First Amendment and the Mississippi law of defamation. Because there is no genuine issue of material fact, *Starkville Daily News* is entitled to summary judgment, and this Complaint's action should be dismissed as a matter of law.

9. In support, *Starkville Daily News* relies upon the pleadings and the record herein, including the legal arguments and authorities contained in its memorandum filed in support of the instant Motion, together with the following:

a. Exhibit A, Declaration of Brian Hawkins;

b. Exhibit B, *Starkville Daily News* print publication;

c. Exhibit C, *The Commercial Dispatch* webpage;

d. Exhibit D, *Starkville Daily News* webpage;

e. Exhibit E, Order Granting Expungement; and

f. Exhibit F, April 22 retraction demand.

WHEREFORE, Defendant Horizon Mississippi Publications, Inc. d/b/a *Starkville Daily News* respectfully requests that the Court grant its motion for summary judgment, dismissing this case with prejudice, and for such other and further relief to which it is entitled.

This, the 9th day of December, 2016.

Respectfully submitted,

HORIZON MISSISSIPPI PUBLICATIONS, INC.
d/b/a *STARKVILLE DAILY NEWS*

By: */s/ John C. Henegan*

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CERTIFICATE OF SERVICE

I, John Henegan, one of the attorneys for Defendant Horizon Mississippi Publications, Inc. d/b/a Starkville Daily News, do hereby certify that I have this day filed a true and correct copy of the foregoing through the Court's ECF System, which has sent notification of such filing to all counsel of record.

SO CERTIFIED, this the 9th day of December, 2016.

/s/ John C. Henegan
John C. Henegan

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